

Amendment and Response

Applicant: Mary K. Toth et al.

Serial No.: 09/483,039

Filed: January 18, 2000

Docket No.: GMI5212USA (G180.122.101)

Title: ATTACHABLE SNACK FOOD CONTAINER

REMARKS

This Amendment is responsive to the Office Action mailed July 2, 2003. In that Office Action, the Examiner rejected claims 38, 39, and 42 under 35 U.S.C. §102(b) as being anticipated by Jeng, U.S. Patent No. 5,180,079 ("Jeng"). Claims 40 and 41 were objected to as being dependent upon a rejected base claim. The Examiner's indication that claims 1-37 and 43-48 are allowable is noted with appreciation. With this response, claim 38 has been amended. Claims 1-48 remain pending in the application. Claims 38-42 are presented for reconsideration and allowance.

35 U.S.C. § 102 Rejections

Claim 38 was rejected under 35 U.S.C. §102(b) as being anticipated by Jeng. Amended claim 38 relates to a snack food container including a side wall forming an upper opening, a bottom wall, a flange body, and a retaining means. The bottom wall is connected to the side wall opposite the upper opening. The flange body extends downwardly from the bottom wall. The retaining means is associated with the flange body for selectively attaching the snack food container to a separate beverage container and is characterized by the absence of threads. The side wall, the bottom wall, the flange body, and the retaining means are homogenous and integrally formed. Jeng fails to teach or otherwise suggest such limitations.

The Examiner states that in making his rejection that the term "integral" was "defined to include both homogenous and separate but joined elements" (Paper Number 18, page 2). In response, Applicants have amended claim 38 to recite the side wall, the bottom wall, the flange body, and the retaining means are homogenous and integrally formed. It is respectfully submitted that the addition of "homogenous" is rooted in the specification and does not present new matter. In particular, the specification uses the term "integral" to refer only to homogenous units, and therefore, the addition of the term "homogenous" to claim 38 merely serves to clarify that usage. The specification describes that "[t]he snack food container 10, including the side wall 16, the bottom wall 18 and the flange body 20, is preferably integrally formed from a plastic material." *Emphasis added* (page 11, lines 3-5). The specification goes on to state that "the skilled artisan will appreciate that in other variations, the snack food container 10 can be

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fabricated such that the side wall 16, the bottom wall 18 and/or the flange body 20 are separately formed and subsequently assembled.” *Emphasis added* (page 11, lines 7-9). Since the specification describes separately formed and assembled parts as being a variation of the integrally formed snack food container 10, “integral” as used in the specification does not include separate but joined units. Rather, the specification uses “integral” to refer to homogenously formed units. At least Figure 2 further supports this language.

Further support for this more narrow definition of “integral” is found elsewhere in the specification. For example, the specification states that “the side wall 16 is preferably integrally formed, but can instead be formed by a plurality of separate sections or panels that are assembled to one another.” *Emphasis added* (page 6, lines 19-21). The use of the word “instead” fully illustrates that “integral,” as used in the current application, does not refer to a unit formed of separate and assembled or joined sections. Rather as used in the specification “integral” refers to a single or homogenous unit. Consequently, the addition of the term “homogenous” to claim 38 does not present new matter, but merely clarifies the definition of “integral” used in the present application.

Jeng fails to teach or otherwise suggest the limitations of amended claim 38. Jeng relates to a combined cup including an upper cup body 301, a lower cup body 303, and a separate connecting body 302 (Jeng Abstract). As previously described, the side wall and the bottom wall of Jeng are included on the upper cup body 301, and the flange and the retaining means for selective attachment to a beverage container are included on the connecting body 302. Therefore, the side wall and the bottom wall are formed separately from the flange body and the retaining means. Accordingly, the side wall, the bottom wall, the flange body, and the retaining means are not homogenous and integrally formed as required by the limitations of amended claim 38. As a result, Jeng fails to teach or otherwise suggest the limitations of amended claim 38, and amended claim 38 is believed to be allowable.

Claims 39 and 42 were rejected under 35 U.S.C. §102(b) as being anticipated by Jeng. Each of claims 39 and 42 depend from independent claim 38. As described above, amended claim 38 is believed to be allowable over the cited reference. Therefore, dependent claims 39 and 42 are also believed to be allowable.

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Allowable Subject Matter

Claims 40 and 41 were objected to as being dependent upon a rejected base claim. Each of claims 40 and 41 depend from independent claim 38. As described above, amended claim 38 is believed to be allowable. Therefore, claims 40 and 41 are not believed to be dependent upon a rejected base claim, but rather, are believed to be allowable.

CONCLUSION

In light of the above, Applicant believes independent claims 1, 19, 38, 43, and 46 and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 500471.

The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

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By their attorneys,

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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class SM, in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 5th day of September, 2003.

By Name: Timothy A. Czaja